

LAKE COUNTY BOARD of ADJUSTMENT
February 14, 2018
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Don Patterson, Frank Mutch, Steve Rosso, Merle Parise

STAFF PRESENT: Jacob Feistner, Rob Edington, Clint Evenson, Lita Fonda; Wally Congdon

Frank Mutch called the meeting to order at 4:01 pm. The Board changed the agenda order at the planner's request, based on members of the public.

BLAKE-GIBSON AFTER –THE-FACT VARIANCE—FINLEY POINT (4:01 pm)

Rob Edington noted the agent and interested members of the public were in attendance. He presented the staff report. (See attachments to minutes in the February 2018 meeting file for staff report.) Regarding the Board Items and #3 on pg. 16, he noted with the current wording, the height was a maximum of 12 feet. The Board might choose to limit the height of the structure if they were to grant a variance to 7 to 8 feet.

Steve said if this was considered destroyed, then the Board was considering an application for a new boathouse. Rob confirmed. With that thought in mind, Steve checked the hardship was that the location of the old boathouse happened to be the only location to put a boathouse. Rob said if this were a vacant lot, it would be 75 feet wide. Boathouses needed to be a minimum of 15 feet to the side property line, which limited it. However, after this structure was constructed really close to the property line in the 1930's, they then built a house in the 1970's [:] a guesthouse with attached decks. Because of that subsequent development on the property, it limited the location for a boathouse. They might be able to construct something further away from the lake. For things like kayaks, they wouldn't have the convenience of having it near the lake.

Steve asked if the 18-year old site plan was representative of what was there today. If that was the case, it looked like there was about 30 feet on the west side of the cabin where a boathouse could go and be within setbacks. Rob said they would need to obtain a variance for a setback on that side unless they narrowed the width of the boathouse and/or reduced the walkway to get the 15-foot setback. It was a possibility. He wasn't sure of the exact location of the holding tank that existed. It would leave them approximately 13 feet of width for a boathouse, based on the setback and the walkway, if this was accurate.

In the front picture of attachment 7, Steve thought the recently built structure looked like it was inside of the log structure. Was the plan to tear down the log structure? Rob thought this would be a question for the agent. He understood that it was based on construction and assumed the logs would go away. Attachment 7 showed pictures from the agent [showing things to be removed]. The second floor would need to be removed. One original request from the applicant was to keep and reuse the same trusses that were

in existence. He could appreciate that. They would need to significantly modify the lower part of the structure even to accommodate. Steve said that they'd need to do that to stay within the 12-foot height.

Rob turned to the color pictures of attachment 8. In photo 1, taken by Planning staff, you could notice the height of the roof and the shingles. Rob confirmed for Steve that he meant the height of the roof on the old log structure. Rob said the log structure might have settled over time. They didn't know. It was fairly short. The second photo was provided from the neighbors. You could see the impacts, particularly of the second floor, on the view.

Rob clarified for Frank that the boat track was on the neighbor's property. Frank said that explained why the boathouse wasn't in front of the boat track. He checked that foundation work had been done already and that the new structure was inside the old one. Rob said that was correct. They used insulated concrete forms you could see in photo 2. Frank asked if there was another addition in the back that was going to be torn down. Rob believed it was a bathroom. He didn't see the intended plans. Frank was interested in the kind of roof height proposed when the applicants spoke later. He noticed boats were getting taller and bigger. Twelve feet might be tight for some of the new boats. Rob said based on the size of the structure, he would assume it would be for items like kayaks or canoes or other lake-related items such as life vests.

Melissa Tuemmler of Carstens & Associates, the agent for the applicants, thought Rob did a pretty good job of covering things. She added when the applicants were notified by the Planning Dept. of the issues, they responded quickly and contacted Carstens to see what they could do or what they'd have to do. They'd been cooperative in this, considering this. She thought they'd [originally] acted on some poor advice. Steve said they got a permit 18 years ago for that construction and got a variance for their deck but they didn't think they needed one for this construction. Melissa said she wasn't aware of that permit until it had been brought up. She believed the poor advice had been to just build within the existing structure and no permit was needed. The applicants hadn't admitted to that but that was her understanding of what they had understood.

Steve asked if the log structure would be torn down and the thing inside it now would be the exterior. Melissa confirmed. It would be finished to look similar to that but the intent was to take the old logs down. They were in bad shape. Steve said if this frame structure was inside the old one, then the new one would be smaller. Melissa confirmed. Steve asked what that footprint was and what that did to setback, since the setback would be larger. Melissa didn't have the actual dimensions available. Jacob said they would measure to the overhang. The overhang of the new structure would probably be beyond the outer wall of the old structure. Steve thought those things were important to know. It was a shame they didn't have a site plan with this information.

Frank turned to the proposed roof. What was the final height the applicants proposed after the new second story was demolished? Melissa said what was submitted in the drawings was approximately 15 feet. That could be modified. They were trying to match

the roofline of the adjacent building. Frank asked if they were willing to settle for 12 feet. Melissa confirmed.

Public comment opened:

Roger Noble and his wife Shawna were the adjacent owners to the east side of the subject property. They acknowledged they considered Anna and Bob Gibson as good neighbors. They'd had a neighborly relationship with them for the past 17 years. They did not take coming to the meeting and protesting this variance lightly. He'd served on the Flathead County Board of Adjustment (BOA). He recognized this was a volunteer position and appreciated their time in serving the community. They submitted their comment letter to the Lake County Planning Dept. on Jan. 31. It was interesting to note that the applicant submitted additional materials to the Planning Dept. on Feb. 6 in response to some of the deficiencies they had identified. With regard to the application, he pointed to inconsistencies in the staff analysis. He thought the boathouse classification was misleading. He read from the report where it acknowledged the intended use of the construction was for living quarters. He said it was going to be a second guest house. In the 17 years that the Nobles had their cabin, it had never been a boathouse. It had always been a shed. He pointed that out in their letter. As you could see in the photos, it wasn't directly accessible to Flathead Lake. A 4-foot high concrete seawall prohibited direct access to the lake. He gave more detail on that. It had been a storage shed for miscellaneous inflatable toys and whatnot.

He moved to a second point regarding the staff report, item 9 (pg. 14). The existing structure was 7 to 8 feet high. He actually measured 7 feet to the top of that roof. You could see the tar paper and the old pieces of wood on top of that thing. It was almost a flat roof. It was kind of bowed. The staff report referenced that the Lakeshore Protection regulations allowed a maximum of 12 feet for a boathouse. This wasn't a conditional use permit for new construction. This was a variance request, which was relative to what was in place at the existing time. That was 7 feet, not 12 feet. In addition, they'd excavated down about 3 feet below the ground there when they poured their foundation and brought up 3-foot stem walls. In actuality, if it was 7 feet, they would still have 10 feet of space in there to use or work with. Someone brought up how wide the logs were. They were only about 6-inch logs so they wouldn't gain much more setback with [the removal of those].

Regarding item #10 (pg.14), Roger said the staff stated a condition would be the submission of a stormwater plan. In addition to that, [the Board] had noted there was no site plan. No map showed dimensions, property lines, setback or anything in that, so the application was basically deficient. For that reason alone, it should be denied.

Roger talked about item #11 (pg. 14). Staff acknowledged there was a wastewater treatment system for a holding tank. As he and his wife mentioned in their letter, an RV trailer was connected illicitly to this for about 5 years. It hydraulically overloaded it. You could see algae was now growing on the shoreline, which didn't previously exist. If the Board did approve this, they had to condition that they never be allowed to connect to that holding tank. It was a disaster waiting to happen.

Roger moved to the findings and Board action request. Item A (pg. 16) involved strict compliance. Reference was made to a destroyed boathouse. The reason it was destroyed was because the applicant cut it apart with a chain saw. It was an intact structure when they started. It wasn't destroyed by natural deterioration. The tar paper roof was intact prior to them tearing the roof off. Somebody noticed other buildable locations for a boathouse. Even that 17-year old variance map showed that they had plenty of room on the back side or even the west side of the property to build a boathouse with a 15-foot setback.

Roger touched on item D (pg. 17) that the hardship was not created by the applicant. The staff report pointed out that the lots were platted in 1924 and the Finley Point zoning regulations went into effect in 1991. The owners had been part of this process from day 1. The applicants' builder was a commercial and residential builder and should have known that permits were necessary when building in the lakeshore. The Finley Point zoning regulations stated it was the responsibility of the property owner and their hired contractors to obtain all required state and local permits. This hardship was solely created by the applicant not adhering to the regulations.

Roger brought up F (pg. 18), that granting the variance would not adversely affect the neighboring properties or the public. He and Shawna spoke to the builder in October while he was adding the roof trusses. She told him it ruined the view. The builder responded, "It sure does." Once this building was framed in, the original logs would be removed and a different façade would be put on. Attachment 4 showed this. It had windows and doors, which previously didn't exist. It would become a high impact area, which was not the case before. They would be impacted physically, aesthetically and economically by a devaluation of their property. These were narrow 75-foot lots, roughly 900 feet long. Everyone needed to be respectful of impacting neighboring properties. The Finley Point zoning regulations introduction talked about protecting and enhancing the property values, enhancing the natural environment and water quality and wildlife. This variance flew in the premise of the regulations. When he reviewed a variance as part of the Flathead BOA, he kept in mind two items. One was if the application met all 7 criteria for granting a variance. Clearly this application didn't meet all 7. Secondly, did they set a precedent if they approved this application, meaning would this approval set the stage for other applications that did not follow statute? This was a classic case of it being easier to ask for forgiveness than to ask for permission.

Should the Board decide to grant this variance, the Nobles felt that would reward a total disregard of the Finley Point zoning regulations. They could not endorse the Lake County Planning staff recommendation as stated. They did think there was room for compromise. Roger showed additional pictures. (See attachments to minutes in the February 2018 meeting file for handouts.) With the first picture, he mentioned the eaves would be on the property line if this taller structure was lowered. This was going to be sleeping quarters when they started, not a boat shed. Picture #2 was a side view. Picture #3 was a view from the east side of the Nobles' lot. He pointed out some features in the view. If this [new structure] wasn't there, they could see the whole Finley Point. Picture

#4 was taken as if you were sitting on their dock. You could see that [the Nobles'] view had been obliterated by this thing. Even going 12 feet high would have an impact on them. It had to be limited to the 7 feet that was originally there. Finally picture #5 was a side-by-side view. This structure was much higher than what they proposed. The existing guest house was visible. The main house was back up on the road. They had garages up there to store water [items]. In the summer, the wave runners were on the dock and they had a ramp on the west side of the lot. They took their ski boat in and out every day on the ramp. It would make more sense to put a boathouse back in a location he pointed out. They didn't do anything back there.

This was the Nobles' perspective. They watched this thing evolve over a year. They couldn't figure out what was going on until they came by in October and the roof was on. Shawna Noble said that after she saw this in October, they met with the Gibsons. Guy the builder was also there. Shawna told them it was really hard for the Nobles to see what they used to see from their deck, which they used a lot. Originally, they had a cabin, when they first bought the property that was [built] in 1932, which they removed and put back [farther from the lake]. They wanted to insure the Flathead shoreline protection. When she mentioned the impacted view, Anna had said that it wouldn't be [impacted] if their cabin was in the middle of the lot. That was true. These lots were beautiful but very narrow. The taxes reflected the value of this lake frontage, and their optimal desire to maintain the value of their property as well as integrity of the Flathead Lake shoreline protection zone. [The Gibsons] had been wonderful neighbors, with a willingness to work out glitches through the years, and a few had occurred. Neighborliness was crucial and consequential with such narrow lots and with so much family coming and going. That was why it was surprising that the 16-foot high proposed structure must be placed at the property line and at the shoreline since there was no real need of using it as a boathouse. They took their boat out every day as the weather didn't allow boats to stay in the lake. They had 3 lots in addition to the one that went on the other side of the road. They had lots of undeveloped room to put structures for whatever they wanted to do.

Shawna said the Nobles felt like the real intent of the structure would eventually be a place to sleep since they had multiple people all the time. It was good to follow the rules in this case and to not allow anything higher or larger than the existing structure. The rules were for cases like this where property owners disregarded the needs of those in proximity as well as environmental impact of housing all of the people that seemed to be coming and going. They were still surprised that the [Gibsons] would undertake this venture without permits, break the rules and then ask for changes to the rules, pleading hardship, which came about from them doing this in the first place.

Public comment closed.

Frank asked about addressing some of the technical issues. He didn't think a lake-related structure had to be a boathouse for boats per se. It could be for things used in the lake. Jacob said the lakeshore regulations defined it as a structure intended for sheltering boats. It didn't define a boat as a motor boat or a ski boat. The heading said boathouses/structures so they were lumped together. Steve said they called them

boathouses because they were a lake-related storage building, whether they actually had a boat in them or not.

Regarding variance versus conditional use, Frank thought the process of review was the same. Jacob said a conditional use was something that the zoning contemplated and had standards of evaluation. A variance would vary from the regulations, where you would have to demonstrate a hardship based on the land, not financial or other. There was definitely a difference. This was currently defined as a variance.

Frank checked that the Nobles were saying to stay with the original size and shape of the old building, including the height, to cure this issue. Roger affirmed and specified the original height of 7 feet with the top of the roof. Frank said if the structure was allowed and if they were suspicious that people would sleep there, it didn't solve that problem. Roger said the applicants had a trailer there for 5 years and then they'd hooked their sewage line into that holding tank. Now they wanted to do that with this thing and make it a second guest house. He suggested you could condition that they could never hook up to have water or sewer in that building. Frank thought a lot of the issues that Roger brought up were solved by the conditions. Roger thought the septic one needed to prohibit a connection. Frank said this wasn't the sanitation board. Rob said those items were just for the zoning conformance permit, if this were boat related. Staff language stated it would be a dry structure, not to be used for living quarters. It would be a violation of zoning if they were to be sleeping in it. Options such as expanding the cabin in some ways opened a can of worms. In his conversations with Environmental Health, any additional expansion, [leading to] any additional wastewater flow essentially required a new septic permit, drainfield location and so on. Frank pointed to condition #6, which covered that.

Melissa said the owner, who was in AZ, had admitted they started building a new structure for a boathouse and then while they were doing it, decided to add another level and it was brought to her attention she couldn't do that. The second level would have to be removed. The issue of water and wastewater connecting was brought up and Melissa told her she would not be able to do that. Once you bring water to a structure, it made it a living space. The owner was aware that no water could be connected to this.

Staff were aware of the intent of the original structure. There was no dispute that they had intended this as a guest house. The zoning allowed one guest house so it would be an additional zoning violation. There were multiple issues there, plus they would need a variance from the setback from the lakeshore. The cabin near the lake was legally nonconforming. Adding a second structure within 50 feet [of the lake] with living space would require a variance. Multiple variances were required. He did indicate to the applicant that they did have the right to request those multiple variances; as Planning staff they would not be able to recommend any sort of living space due to the multiple variances required and in addition, the neighbors did not want living space there, and so on.

Merle asked questions about the construction. Shawna replied they first saw it in January 2017. It was going on very slowly over last summer. Steve said if he were to look at this application with the existing structures except the old log structure, and the owners said they wanted to put in a storage unit for lake-related items and thought they needed a variance, he thought he'd look at this differently. He'd want to see an accurate site plan and find out why they couldn't put it on the other side. He understood wanting it to be close to the water if they were going to have kayaks, canoes, lifejackets and so forth in it. He thought Board members were being pushed because the applicants had done all of this construction, especially the foundation work that was done inside this old log cabin.

One of the items on the Board's list was whether to charge an administrative penalty. If the Board were to approve this, it seemed like that might be appropriate. If the Board didn't approve this, and they had to come back, and it meant they were going to have to jackhammer that concrete out, the costs of taking down what they'd done would be enough of a penalty. He was leaning in that direction. It was a shame. This happened so many times. People came to the Board after the fact, and the Board could have saved them a whole lot of expense and trouble, and a whole lot of problems with their neighbors if they had come to the Board at the beginning.

Steve thought sending that message was valuable to do. He would have a hard time making a decision on it today. If the rest of the Board thought they could, he was open to hearing from them. If he had to make a decision, he'd want to see an accurate site plan and a more thoughtful presentation of what the options were for where they could put a boathouse and how big it might be. A 15-foot setback was a problem in this small lot. Rather than to come here and say the only place they could put it meant the edge of the roof would drip on the property line, it didn't look like the only option. They could at least move it 5 or 10 feet away from the property line although maybe not 15. He thought the Board members were being pushed because the applicants had a big pile of concrete in the ground. Jacob said that was unfair to the Board. The Board shouldn't be in that position. Staff encouraged property owners to call before the concrete went in the ground. Merle said a lot of people weren't aware of that avenue they had. He referred a lot of people to Planning.

Wally gave another simple problem. The log building was cut but not down. It was a non-conforming use. It wasn't 50% gone. What you did inside the structure didn't require zoning conformance. The leverage they had was if you were going to replace the roof on that structure, could you say the roof could be less than what was allowed for a conforming structure. The rule required was 12 feet of height. He had trouble taking the existing non-conforming use and saying they weren't going to give a permit to put a conforming roof on it at 12 feet. Part of the purpose was to bring the structures into compliance over time, not to bulldoze them today, which was the American way at Flathead Lake. The purpose of the zoning wasn't to get rid of those today. The structure was there. He thought the only hope to bring it closer to compliance was to figure out what it took to do that. The Board identified two things. They should encourage taking the logs off to make the nonconforming dimension closer to conforming. The applicants could decide not to take the logs down. If they said that, they were stuck with the logs.

If they said they were going to replace the roof to be 12 feet high, that was what they had the right to do per the existing zoning. The question became could you put that use on a nonconforming structure or not. If they did, that wasn't one he'd want to enforce with a judge or a jury. The big two issues were what's the height of the roof and where did the water drip to, if they could fix those two things in the equation. Thirdly, if the plan was to take the logs down, make the wall that the neighbors see look more appropriate for the neighborhood. At least if you made it more aesthetic, you extracted a bunch of stuff that you could extract. Other than that, they couldn't touch it.

Steve checked if that depended on whether that existing structure was being repaired or destroyed. Wally said the question was whether it had been destroyed or not. He would argue it wasn't destroyed if the logs were in good enough shape. Steve pointed out that Rob just told the Board that it was destroyed. Wally said the neighbor said the logs weren't that bad. It was just hurt because they ran a chainsaw through it. Steve said that was the question that came up. Various people spoke. Frank said it looked like they cut the roof off with a chainsaw and left the logs intact. Roger referred to the south side and cutting and thought he had photos. Steve said the whole back of the log structure away from the lake had been cut out. It just had 3 walls. Wally said that was 75%. Steve said with no roof. Wally said he counted 75%, and taking it all out with 75% wasn't the rule, so was it a variance or not for the structure. Roger showed his photos. He showed the back side, where it ended before and where they bumped it out to put in the bathroom and so forth. He showed also how the eaves hung right on the property line. Wally said if you cut it down to the size it was, solved the problem with the eaves and the height, that, to him, was the best they had of the new rules to do. That at least got them the size that was closer to conformity, it got rid of the water/sewer/septic/holding tank problem etcetera, it solved the issue of the water not going on the neighbor's property and then give them some guidelines on the aesthetics of what they were looking at.

Steve said, from his perspective, what they were saying was they could go back to the old structure and didn't need a variance or the Board could give them a variance and they could do something else. If the Board decided not to give them a variance, he thought they still had the other option of going back to the old structure. Frank thought they'd need a variance to increase the roof height. Wally said that was his question. To go from 9 feet of old height to 12 would need a variance or not but the other problem was they had no guarantee what it would look like. Steve said they would come with another application through the zoning conformance. Wally said they didn't have to. Steve said if they just repaired the existing structure that was true. Wally said if they just treated it as a repair, what they put inside was their own business. Steve said the outside of the building had to look like the old building. Frank and Wally asked about changing the height of the roof.

Jacob clarified that the building had been deemed destroyed. If the applicant didn't agree with that, they could appeal that to the district court. Any work that needed to be done with it now required a variance unless it was moved outside of the setback. Frank asked if he'd defined that it was destroyed. Jacob replied [it was] beyond 60% by a destructive

action. They'd been onsite, looked at it and decided it was destroyed. Someone added they destroyed it themselves.

Motion made by Steve Rosso, and seconded by Merle Parise, to deny this application. Motion carried, 3 in favor (Don Patterson, Steve Rosso, Merle Parise) and one opposed (Frank Mutch). (5:04 pm)

Frank explained that his view was to ask for more information and revisit it, with an updated site plan, a plan of the roof and something where the neighbors could commit. By denying it, they'd said the applicants could come back and make another run at it. What happened to the structure in the meantime? Steve thought they had a structure that they built without a permit. Merle said it was in violation right now. It had to go. Jacob said they were supposed to come into compliance within 30 days of the notice. They made an effort to do that by applying for this variance. Now that it had been denied, they'd have to get rid of the structure.

Frank asked if the fine issue was still on the table. Jacob said that was up to the Board. Frank asked if the Board wanted to discuss that issue or if denying the variance was enough punishment. Merle thought the labor to remove the structure would be more than the fine itself. Steve didn't feel they needed to fine them.

Melissa asked if they couldn't put it back to the way it was. They had to tear the whole structure down, including the existing log? Frank said or else they had to come back. His understanding was they had to tear down the new portion. Melissa wondered about the other portion. Steve said the old one was destroyed. They could leave it there. They couldn't fix it. Melissa checked that their only choice was to tear everything out but leave 3 walls. Steve confirmed. Jacob said the concrete they poured had to go away too. Frank asked if they had the right to tear the structure down and come back for another run. The environmental damage of tearing out a slab was something to be considered. Jacob said they could table the decision to next month and visit it again. He didn't know if that might be a better option. Frank asked if they wanted to reopen the discussion. Board members replied no.

Motion made by Frank Mutch, and seconded by Don Patterson, to reopen the discussion to consider tabling the item and requesting a better site plan and looking at the options that would cause the least environmental impact plus something that the neighbors would agree to. Motion failed for lack of quorum, 2 in favor (Frank Mutch, Don Patterson) and two opposed (Merle Parise, Steve Rosso).

Frank thought Jacob and Rob could clarify and explain in detail what was required now. Merle thought Melissa needed to explain to the applicants. Jacob said they could meet with Melissa this week and talk about the options.

NELSON CONDITIONAL USE—FINLEY POINT (5:08 pm)

Clint Evenson presented the staff report. (See attachments to minutes in the February 2018 meeting file for staff report.) On pg. 10 towards the end of #2, he pointed out that

‘replacement’ would probably be more construction of a dry boat storage building. On pg. 14 at the top, Clint gave more information on Eric Pfeiffer’s verbal comment. His understanding was the removal of trees that previously blocked wind had led to a couple of trees falling down. There were also questions on whether the access road/easement was able to be expanded upon and whether vegetation was allowed to be cut.

Merle asked about the last bullet on pg. 11, when the house was built and engineering factors used in designing the house. Clint and Rob didn’t know. Rob recommended adding a condition that wasn’t covered in the report. He referred to pg. 13 within attachment #6, and read the ‘Conclusion’ paragraph of Slopeside Engineering, LLC. His understanding was the engineer recommended more than just the original design due to the nature of the slopes, and that there was an ongoing [component, so] staff felt an additional condition should be considered by the Board. If there were geotechnical concerns and a plan was permitted, nothing followed up that the plans per the geotechnical engineer’s report were followed. Lake County did not administer the building codes or inspect things like foundations.

Frank thought they were saying there needed to be more geotechnical investigation on the site now because the disturbed area was increased. Staff confirmed this was a condition now. Frank suggested adding there would be supervision or inspection by geotechnical services during construction. It seemed reasonable. The condition should say that a qualified engineer should do it, so the owner had choice of who they hired. Clint checked on phrasing. Frank said ‘ongoing inspection’ and Merle added ‘during the construction phase’. Steve used the word ‘involvement’. Mary added engineering ‘oversight’. Steve combined into ‘engineering oversight during the construction’. Rob said they’d had other slope analysis from this particular engineer where he hadn’t made this recommendation. This indicated maybe there was something unique. The engineer talked about subsurface moisture and various concerns. Those could be addressed but should have some sort of oversight. Steve noted safety factors of less than 2 there; engineers liked to see a safety factor of 5. That was a concern.

Frank confirmed with Steve that in layman’s terms, this was a pretty greasy slope. Merle pointed to samples already taken. Clint referred to attachment #5, photo #5 where you could already see a little bit of benching that had been done. Merle thought the engineers might have done this for the machinery for the samples. Frank checked that the benching stopped erosion. Steve confirmed. Frank quipped that a migrating house might need to be evaluated as a mobile home.

Steve asked about the second bullet in #7 on pg. 11 and potential risk of damaging the sub-foundation of the highway itself. Clint didn’t think the State Highway Dept. had looked at this or commented as they had not been contacted. The proposed building site was outside the County right-of-way. Steve read from the second bullet. It seemed like it was a potential issue.

Steve noted the first conditional use (FP 16-18) was applied for and granted in 2016. The date on the work from Slopeside Engineering was Aug. 10, 2017. Jacob clarified that this

Board granted the approval with the condition that they get that analysis before the zoning conformance permit was granted. He confirmed for Steve that a zoning conformance wasn't issued. There was a new ownership and a new plan. Clint added the new owner aggregated the lots after he purchased it. Steve checked that with a new architectural plan and new site plan, the current owner needed to get this geotechnical report done. Melissa clarified this report was done for Scott Nelson. The previous owner did not pursue this. Frank checked that the location of the building had changed. Steve asked whether or not it was done for the right site. Jacob said they either wanted a new plan or verification that it was good for this plan.

Discussion turned to the site plan. Clint pointed to one in attachment 3. Steve said one was also in attachment 6, on pg. 15 of that attachment. If you compared the two site plans, there was a little difference. The shape of the house and some of the shed locations were different. Frank thought the soils were probably uniform over the site. They could probably salvage some of that data.

Melissa spoke about the application. She thought the information had been well covered. Regarding the site plan, the building location and the design had taken many forms over time. It had to be able to work with onsite wastewater, stormwater and so forth. There'd been a lot of little tweaks. It had been a challenging site.

Public comment opened: None present. *Public comment closed.*

Frank assumed the clearing of vegetation had to do with the width of the easement that was recorded, if it was recorded. He assumed it was reasonable to clear shrubbery from a right-of-way. Steve agreed for the driveway but not the front yard. Rob said the neighbor's concern was outside the scope of this project as well as off the property. Jacob said the Board might recall that last time there was a dispute over the access. That had since been settled.

Steve turned to pg. 16, finding #5. The statement that the proposed development was not expected to have any impact on MT Hwy 35 in that finding was pretty general. He thought it referred to traffic and general access. They needed to make a statement that there's wouldn't be impacts as long as the Montana Dept. of Transportation (MDT) confirmed this kind of construction next to the highway wasn't going to damage the road bed. If the comments in the other bullet were true, and there were cases where the road base had been damaged because of construction in the area, they needed a comment from MDT that it was okay to go ahead and build this.

Frank thought the bullet points were to defend #7, which told the applicant they needed to hire engineers and why. Clint said the house was over 100 feet from the highway. Frank said it wouldn't hurt to have the MDT comment on it. Steve agreed. He guessed they wouldn't have concerns. Jacob said what came to their minds was the 'mobile' home, where it did affect the road bank. There were huge concerns there. He thought it was a 4 or 5 million dollar project to restore that. To the north, another house slid down to the lake and had to be removed although it didn't affect the highway. There had been two in

the area. Some of the road shoulder in the area was breaking away, just in general. With those 3 things in mind, staff thought they needed to think about this pretty seriously. Steve thought [it wasn't good] to say there would be no impacts to MT Hwy 35, when they knew there had been structural impacts in the past. Jacob suggested handling that in a condition. Steve was concerned about the finding. They could add to #5 that it wouldn't have any impact 'on traffic' on MT Hwy 35.

Steve asked about wording for a condition on engineering involvement during construction. Rob said condition #4 would be the recommended condition in which to add something. Steve added another sentence: 'A licensed professional engineer shall stay involved during construction to assure that the design and the data that the slope analysis was based on conforms to the real conditions on site.' Lita asked for the portion after ensure. Steve restated: '[A licensed professional engineer shall stay involved during construction] to ensure that' and Merle added 'the specifications and design'. Steve agreed and continued 'the slope analysis correctly relates to the real conditions and that the construction meets the requirements of the design.' Frank asked what they wanted to assure. Steve replied that the construction was right and the conditions weren't different from what they assumed they were from two bore holes. Frank suggested: 'These engineering services shall include oversight during construction to assure no adverse impacts are created due to the slope disturbance.' He thought it was fine either way. Based on the conclusion in the report, Steve thought the planners made a good catch.

Jacob asked about adding a comment from MDT. Clint noted this would be a new condition. Frank suggested: 'MDT shall be consulted with concerns for slope stability of the highway caused by this project.' Steve added 'impacts to' prior to 'slope stability'. Rob said they would typically preface that with 'Prior to issuance of a zoning conformance permit'. Frank and Steve thought that sounded good. Melissa asked what happened if the impacts were bad. Steve thought the owner would have to go back to the slope engineers and find out how to make sure the highway would be okay.

Clint checked if something needed to be added to the revegetation plan. Steve said the fact that it was in there was great. Merle thought they might have cut the trees down just to get the engineer in there to do the core samples.

Motion made by Frank Mutch, and seconded by Don Patterson, to approve the conditional use subject to the findings, terms and conditions, as written and as amended. Motion carried, all in favor.

BLAKE-GIBSON REVISITED (5:57 pm)

Wally reported that he had a long visit with the Gibson neighbor. Their issue was the height. If the neighbor had no variance, the problem was these neighbors got to look at the wall of a cabin falling [down] that didn't have to be removed. The [neighbors told him] they didn't have a problem with the variance. The problem was they wanted to make sure the height wasn't a problem and that water wouldn't be dumped on them. They would rather not look at reflective surfaces on the roof. Wally said the Board could

make a motion to reconsider what it did, and table it to the next meeting, have a visit with the person who represented the applicant, call the neighbors back and figure out a way that worked for everybody so there was no angst in the neighborhood. They got a structure closer to what it was supposed to be. The other amenity they could then deal with was the holding tank, which had been overflowing. There were two choices. They didn't have to replace it if they just left the structure. [With a variance, they could say] part of the variance's conditions were to show the health dept. that you pumped it out every 3 months in the summer or whatever, or finally hook it on to a drainfield and replace it with a septic tank. Take the stuff off the back of this building, which is a dry building, but solve the issue of the holding tank that overflowed and got to the lake. They had no other way of dealing with it except to do it indirectly as one of things that was a variance kind of perk or variance mitigation strategy for the variance for leaving the building where it was.

Frank asked if the holding tank was approved. Wally and Melissa confirmed that it was permitted for the cottage. Steve said it seemed like if someone had a permitted holding tank, there must be some requirement to pump it. Wally said there was not. The assumption was that you couldn't let it overflow and that you would pump it. The County had no rule that did it. The rules didn't say the Board couldn't do a motion to reconsider their previous action, table it and have a discussion with staff and the other parties in the meantime, and reconsider this at the next meeting. That might get them where the [neighbors] were worried about going and do the amenity thing they needed to do for the good of the lake etcetera.

Steve asked when someone asked for setback variance and the Board tied a mitigation measure to that, which had nothing to do with the setback, was there a problem? Wally said no, because what he could do to mitigate the issue of the use and the rest of it next to the property line was mitigate with other things that affected the quality of health, safety and welfare. The reason for the setback was to provide, preserve and protect the health, safety and welfare. If they were going to give the variance on the setback, [they're then] closer, and they'd impacted health, safety and welfare but the thing that offset that detriment to health, safety and welfare was to fix the holding tank. Frank asked if they were reaching beyond the authority of this Board by getting in the sanitation. Wally replied they weren't. It was no different than stormwater drainage. It's a grasp in one sense but at the same time, it had enough actual basis behind it that it was defensible.

Merle recommended that the Board stay with what they did, and ask the Planning Dept. not to go back to square one, but say 'here's what you need to do'. Have them pass the information on and have a whole new presentation for the Board to look at and see if they could approve it. Wally said that might be the way to do it. Frank said in the meantime, they had to tear down everything. Merle said they'd have to tear down the building anyway. Frank said not necessarily. Merle disagreed. Several people responded.

Steve said they'd have to tear down everything but the concrete. They might start over. Even if they were going to make the walls lower, they weren't going to cut those off and put a new plate on the top of those studs and so forth. They were just going to tear all

that out and then put new framing on that concrete. There's a possibility they could save the concrete if [the Board] agreed on the location they had. The location might be okay, once they said what the location was. His problem was he hadn't seen the location. There were no dimensions or site plan.

Frank said on the structure, they had the investment of the concrete. He thought it was reasonable to say that jackhammering the concrete that close to the lake wasn't a plus for the environment. The other thing was the way it was framed, generally there was an 8-foot stud and a plate, and then that rigid frame truss sat on top of it. He didn't know why those side walls couldn't be salvaged but that was up to them, not the Board. Steve said it depended on how they were going to get under the 12 feet and so forth. Frank assumed the neighbors precipitated this. If that was the case, he assumed they were the most damaged party and if they could work out something that was acceptable to the neighbors then what would be wrong with it? Steve thought it was interesting that they wrote a letter saying 'please deny this' and now were saying they didn't think it should be denied. Wally said that was what they were saying. They felt like the message they forgot to give the Board clearly was the issue was height. The other issue was they were stressed about the holding tank causing green algae and green stuff on the beach. What they were trying to do was for the good of the neighborhood and so forth and they didn't mean for it to go where it went. Wally had an interesting dilemma: Jacob said he got to decide as the Planning Director that it's a destroyed structure. Wally had the neighbor saying that it wasn't. He didn't want them to file an appeal to district court, and have to put the neighbor on the stand, who would say it wasn't destroyed, and then put the Planning staff on the stand, who would say it was destroyed. Board members gave numerous and simultaneous comments.

Jacob said they might get a site plan to demonstrate setbacks to the side property line and the lake, as well as elevations and dimensions of the structure. Steve thought they also needed an evaluation based on that accurate site plan of why they couldn't put it somewhere else and why this was the best place for it. Multiple comments broke out. Frank thought it was easy for the neighbor on the east to have the building moved to the west. How about the neighbor on the west? It was easy for the neighbor to say they owned a bunch of land and could do something else. What if they didn't want to do something else? Steve thought it was reasonable to want to build your lake-related storage shed down by the lake. This idea that you could put it 300 feet back from the lake and you had plenty of room back there—he didn't think that was an issue.

Wally said the other reason it went where it went was they'd had the structure there since the 1930's. He agreed it was probably more than ½ gone. The neighbors also didn't want to look at the wreck of the rest of it. The only way you could mitigate things like color, height, the holding tank and the rest of it was the variance route. Those were defensible in respect to health, safety, welfare, the shoreline protection ordinance and the rest of it in the zone. Steve compared it to a small-scale Slack, where someone said if you just kept it the same, you wouldn't need a permit. Was there enough time, before they hit some problem with a deadline for hammering out the concrete, to get something done without the Board doing something or did the Board need to change their decision.

Jacob said if they were willing to look at it again, it would be best to table it and look at it again. Otherwise they had to start with a new application.

Frank asked if the roof design had been thought about for the lower structure. Melissa said that was what the drawing was. Frank said they wanted 17 feet but 12 feet was the maximum and the neighbors wanted 9. Jacob corrected this to a maximum of 8. Melissa guessed they'd have to do whatever was determined. They presented to the Board what they wanted because it all matched. It had to be something else.

Frank asked if they were on the record and if they had to reopen the Blake-Gibson variance. Steve noted they hadn't adjourned. Wally said they should formally do that for the record and reconsider what they had. It was their choice.

Steve said he didn't want to give these people any false impression that they had a second chance to get what they wanted. They were going to have a big modification to make to their plan. A lot of what they'd done was going to have to be torn down. Somebody had to spend some time justifying the location of this thing to him. If the decision had been made that this thing was destroyed, then the Board of Adjustment had to look at it as if it could go anywhere. Jacob didn't think it was fair that the Board be pushed into a decision. They should be able to make it based on sufficient information. Merle said he was staying with his. Steve wondered if tabling it gave the wrong message.

Melissa said the problem was if it was denied and they could reapply, if she was a person in that situation, she would have difficulty reapplying and going through this again with the idea that she'd probably get denied again. She thought the Board would still have all their options available with revisiting with more information, which was more logical and better for everybody involved because then the Board could still say flat out they were denying it. To say you could resubmit but no guarantees, they would probably say [inaudible]. Frank thought variances cost \$800. Jacob corrected that to \$500. Wally said if they tabled it, they didn't have to apply again. If they denied it, they'd have to apply to redo it. If he was the applicant, he'd leave the wall to fall down for the next 30 years and build somewhere else without a variance. That wasn't what the neighbor wanted, it didn't do good stuff for the neighborhood and it didn't fix the holding tank.

Merle said he had a major problem. If you looked at it in photo 4 that [the neighbor] gave the Board, the height of the concrete and the back of the old shed was halfway up the shed. That concrete went in because he thought they purposefully left those logs out so they could hide that concrete on the height of the building. If they wanted to rebuild that building, it would be 12 feet high, which was still way up to the second floor of the house. Wally said they couldn't make it high like that. Merle agreed. He said they couldn't use the existing concrete foundations they had in there now. Steve said they could put a short little wooden wall on top of the concrete. They measured from the floor up. Frank said that was the excavation. That didn't show natural grade. This was all fill. Merle showed where to see and to look at it. Steve said the whole wall could be concrete. They could put the roof right on top of the concrete. Merle said that was correct. Wally said they couldn't go high. Merle agreed that was correct. They'd have to tear the whole

place down anyway. Wally said they'd have to take all the stuff they built over the top that [wasn't there].

Steve said he would be willing to table this thing but he wanted to make sure and trust [the planners] to pass the message that these guys had to come up with a complete application and a reasonable plan that was justified if they were going to gain anything from this tabling. Otherwise they were just going to get a one-month delay from having to tear everything down. Frank thought they should make it a motion. He thought they needed two motions: one to reopen the discussion or reconsider their last decision for a denial. Was that proper? Wally thought that was the way to do it. Frank said they needed to reopen this discussion and reconsider their denial of the variance.

Motion made by Frank Mutch, and seconded by Don Patterson, to reopen the discussion and reconsider their denial of the Blake-Gibson variance. Motion carried, all in favor.

Frank began the next motion, then asked what they might need besides a correct dimensioned site plan, a detailed plan of the proposed building and a justification as to the location. Steve thought they needed a complete application and they should do or suggest to the planners some of the work as far as meeting the variance criteria, which included all those things to establish a hardship. Frank said maybe they should say they were tabling this and requiring/requesting if the applicant wanted to continue, that they submit the data/information as required by the Planning Dept.

Motion made by Frank Mutch, and seconded by Don Patterson/Merle Parise, to table the Blake-Gibson variance and to require/request if the applicant wanted to continue, that they submit the data/information as required by the Planning Dept. Motion carried, all in favor. (Approximately 6:10 pm)

Melissa thought that was fair.

Frank asked Jacob if the holding tank would be mentioned in discussion with [the applicant]. Rob said he would listen to the audio and make the points in issuing a letter so she'd have that in writing, as the agent. In regards to the holding tank, the zoning conformance required that any requirements be met from Environmental Health. If there was a concern, they'd pass the issues of the potential holding tank onto Environmental Health. It was his understanding (and again, he wasn't a sanitarian) that if they added a port for their RV, that was prohibited and they would need to address that issue. Jacob said they would address any impacts related to the subject structure.

Rob said one final issue was if they were back there with an RV, which could potentially dump in there, they would need to come back for a conditional use for that. That was one of the conditions. One thing staff looked at for a temporary use of a structure on a seasonal basis was how they were going to deal with it and did they have an adequate [system], if there was a port, and was it approved by Environmental Health. If they continued that use, it would need to be approved. Frank said his gut feeling was they

might be viewed as exceeding their authority if they got into the holding tank. Jacob said that was what he felt.

MINUTES (6:13 pm)

On pg. 5 at the end of the second paragraph, Steve wasn't sure what was meant by the last sentence, nor was Frank. That sentence was scratched.

Motion made by Steve Rosso, and seconded by Frank Mutch, to approve the Jan. 10, 2018 meeting minutes as amended. Motion carried, all in favor.

Frank Mutch, chair, adjourned the meeting at 6:15 pm.